

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

WESTERN VALUES PROJECT, )  
704C East 13th Street, Suite 568 )  
Whitefish, MT 59937 )  
                                )  
                                ) Plaintiff, )  
                                )  
v.                            ) ) Case No. 19-2527  
                                )  
U.S. DEPARTMENT OF THE INTERIOR, )  
1849 C Street NW )  
Washington, DC 20240 )  
                                )  
                                ) Defendant. )  
                                )

## **COMPLAINT**

1. Plaintiff Western Values Project brings this action against the U.S. Department of the Interior under the Freedom of Information Act, 5 U.S.C. § 552 (FOIA), and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, seeking declaratory and injunctive relief to compel compliance with the requirements of FOIA.

## **JURISDICTION AND VENUE**

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 1331, 2201, and 2202.

3.       Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

4. Because Defendant has failed to comply with the applicable time-limit provisions of the FOIA, Western Values Project is deemed to have exhausted its administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C)(i) and is now entitled to judicial action enjoining the agency

from continuing to withhold agency records and ordering the production of agency records improperly withheld.

### **PARTIES**

5. Plaintiff Western Values Project (WVP) is a nonprofit, public-interest organization that gives voice to Western values in the national conversation about resource development and public-lands conservation. WVP uses the information it gathers as well as its analysis of it, to educate the public through reports, press releases, or other media. WVP also makes the material it gathers available on its public website.

6. Defendant U.S. Department of the Interior (DOI) is a department of the executive branch of the U.S. government headquartered in Washington, DC, and an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1). DOI has possession, custody, and control of the records that WVP seeks.

### **STATEMENT OF FACTS**

7. On June 21, 2019, WVP submitted a FOIA request to DOI stating the following:

Pursuant to the Freedom of Information Act, I request access to and copies of all emails, Bison Connect messages, Google chat messages, text messages, WhatsApp messages, Signal messages, faxes, Facebook messages, Microsoft Lync message[s], Twitter direct messages, or any and all messages delivered by hand or by courier, between David Bernhardt and any individuals at the following organizations:

- Brownstein Hyatt (including, but not limited to all communications with any email address ending in @bhfs.com)
- Active Network LLC (formerly known as Aspira) (including, but not limited to all communications with any email address ending in @activenetwork.com)
- Cadiz Inc. (including, but not limited to all communications with any email address ending in @cadizinc.com)
- Center for Environmental Science Accuracy and Reliability (including, but not limited to all communications with any email address ending in @bestscience.org)

- Cobalt International Energy (including, but not limited to all communications with any email address ending in @cobaltintl.com)
- Eni Petroleum (including, but not limited to all communications with any email address ending in @eni.com)
- Forest County Potawatomi Community (including, but not limited to all communications with any email address ending in @fcpotawatomi-nsn.gov)
- Garrison Diversion Irrigation District (including, but not limited to all communications with any email address ending in @garrisondiv.org)
- Halliburton Energy Services LLC (including, but not limited to all communications with any email address ending in @halliburton.com)
- Hudbay (including, but not limited to all communications with any email address ending in @hudbayminerals.com)
- Independent Petroleum Association of America (including, but not limited to all communications with any email address ending in @ipaa.org)
- Don Klees
- National Ocean Industry Association (including, but not limited to all communications with any email address ending in @noia.org)
- Noble Energy Company LLC (including, but not limited to all communications with any email address ending in @nblenergy.com)
- NRG Energy Inc (including, but not limited to all communications with any email address ending in @nrg.com)
- Rosemont Copper Co (including, but not limited to all communications with any email address ending in @rosemontcopper.com)
- Santa Ynez River Water Conservation District (including, but not limited to all communications with any email address ending in @syrwd.org)
- Sempra Energy (including, but not limited to all communications with any email address ending in @sempra.com)
- Statoil Gulf Services LLC (now known as Equinor Gulf Services) (including, but not limited to all communications with any email address ending in @equinor.com)
- Statoil Wind LLC (including, but not limited to all communications with any email address ending in @equinor.com)
- Targa Resources Company LLC (including, but not limited to all communications with any email address ending in @targaresources.com)
- Taylor Energy Company LLC (including, but not limited to all communications with any email address ending in @taylorenergy.com)

- U.S. Oil and Gas Association (including, but not limited to all communications with any email address ending in @usoga.org)
- UBE PC (including, but not limited to all communications with any email address ending in @ube.com)
- Westlands Water District (including, but not limited to all communications with any email address ending in @westlandswater.org)

In addition, I request access to and copies of all documents in each Surname folder for each of the following individuals, as maintained by the Office of Executive Secretariat:

- Peter N. Brown, of Brownstein Hyatt
- Beth Collins, of Brownstein Hyatt
- Diana C. De Felice, of Brownstein Hyatt
- Mark J. Matthews, of Brownstein Hyatt
- Jon Hrobsky, of Brownstein Hyatt
- Luke Johnson, of Brownstein Hyatt
- Lawrence J. "Larry" Jensen, of Brownstein Hyatt
- Ryan A. Smith, of Brownstein Hyatt
- Ryan Waterman, of Brownstein Hyatt
- Evan Davies, President of Active Network, LLC
- Scott S. Slater, Chief Executive Officer & President of Cadiz, Inc.
- Craig Manson, Executive Director of CESAR
- William P. Utt, Chairman of Cobalt International Energy
- Timothy J. Cutt, CEO of Cobalt International Energy
- Emma Marcegaglia, Chairwoman of Eni Petroleum
- Claudio Descalzi, Chief Executive Officer of Eni Petroleum
- Ned Daniels Jr., Forest County Potawatomi Tribal Chairman
- Harold "Gus" Frank, former Forest County Potawatomi Chairman
- Ken Royse, Chairman of the Garrison Diversion Conservancy District
- David Lesar, former chair of Halliburton Energy Services, LLC
- Jeff Miller, President, CEO, & Chairman of the Board of Halliburton Energy Services, LLC
- Alan Hair, President and Chief Executive Officer of Hudbay
- Steven B. Hinchman, Chair of IPAA
- Randall Luthi, President of NOIA
- David L. Stover, Chairman and CEO of Noble Energy
- Mauricio Gutierrez, President and CEO of NRG Energy
- Rodney O. Pace, Chief Executive Officer, President and Chief Operating Officer of Rosemont Copper Company
- Harlan Burchardi, Division 1 Representative for Santa Ynez River Water Conservation District, Improvement District No. 1

- Debra L. Reed, Executive Chairman of Sempra Energy
- Jon Erik Reinhardsen, Chair of Equinor
- Eldar Sætre, CEO of Equinor
- Joe Bob Perkins, Chief Executive Officer and Director of Targa Resources
- Matthew J. Meloy, President of Targa Resources
- Phyllis M. Taylor, Chairman of the Board and Chief Executive Officer of Taylor Energy
- Albert L. Modiano, President of US Oil & Gas Association
- Michio Takeshita, Chairman of the Board & Director of UBE Industries
- Yuzuru Yamamoto, President of UBE Industries
- Thomas W. Birmingham, General Manager of Westlands Water District
- Jon D Rubin, General Counsel of Westlands Water District
- John "Johnny" Amarol, Government Relations for Westlands Water District
- Don Peracchi, President of the Board of Westlands Water District

8. By letter dated June 24, 2019, DOI acknowledged receipt of WVP's FOIA request and assigned the request tracking number OS-2019-01000.

9. WVP has received no further communication from DOI regarding the processing of its FOIA request.

*Exhaustion of Administrative Remedies*

10. As of the date of this Complaint, DOI has failed to (a) notify WVP of any determination regarding its FOIA request, including the scope of any responsive records DOI intends to produce or withhold and the reasons for any withholdings; or (b) produce the requested records or demonstrate that the requested records are lawfully exempt from production.

11. Through DOI's failure to respond to WVP's FOIA request within the time period required by law, WVP has constructively exhausted its administrative remedies and seeks immediate judicial review.

**COUNT I**  
**Violation of FOIA, 5 U.S.C. § 552**  
**Failure to Conduct Adequate Searches for Responsive Records**

12. WVP repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

13. WVP properly requested records within the possession, custody, and control of DOI.

14. DOI is an agency subject to FOIA, and it must therefore make reasonable efforts to search for requested records.

15. DOI has failed to promptly review agency records for the purpose of locating those records that are responsive to WVP's FOIA request.

16. DOI's failure to conduct adequate searches for responsive records violates FOIA and DOI regulations.

17. Plaintiff WVP is therefore entitled to injunctive and declaratory relief requiring Defendant to promptly make reasonable efforts to search for records responsive to WVP's FOIA request.

**COUNT II**  
**Violation of FOIA, 5 U.S.C. § 552**  
**Wrongful Withholding of Non-Exempt Responsive Records**

18. WVP repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

19. WVP properly requested records within the possession, custody, and control of DOI.

20. DOI is an agency subject to FOIA, and it must therefore release in response to a FOIA request any non-exempt records and provide a lawful reason for withholding any materials.

21. DOI is wrongfully withholding non-exempt agency records requested by WVP by failing to produce non-exempt records responsive to its FOIA request.

22. DOI is wrongfully withholding non-exempt agency records requested by WVP by failing to segregate exempt information in otherwise non-exempt records responsive to WVP's FOIA request.

23. DOI's failure to provide all non-exempt responsive records violates FOIA and DOI regulations.

24. Plaintiff WVP is therefore entitled to declaratory and injunctive relief requiring Defendant to promptly produce all non-exempt records responsive to its FOIA request and provide indexes justifying the withholding of any responsive records withheld under claim of exemption.

**REQUESTED RELIEF**

WHEREFORE, WVP respectfully requests the Court to:

- (1) Order Defendant to conduct a search or searches reasonably calculated to uncover all records responsive to WVP's FOIA request;
- (2) Order Defendant to produce, within twenty days of the Court's order, or by such other date as the Court deems appropriate, any and all non-exempt records responsive to WVP's FOIA request and indexes justifying the withholding of any responsive records withheld under claim of exemption;

- (3) Enjoin Defendant from continuing to withhold any and all non-exempt records responsive to WVP's FOIA request;
- (4) Award WVP the costs of this proceeding, including reasonable attorneys' fees and other litigation costs reasonably incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
- (5) Grant WVP such other relief as the Court deems just and proper.

Dated: August 21, 2019

Respectfully submitted,

*/s/ Hart W. Wood*  
Hart W. Wood  
D.C. Bar No. 1034361  
AMERICAN OVERSIGHT  
1030 15th Street NW, B255  
Washington, DC 20005  
(202) 873-1743  
[hart.wood@americanoversight.org](mailto:hart.wood@americanoversight.org)

*Counsel for Western Values Project*